

1                   UNITED STATES DISTRICT COURT  
2                   EASTERN DISTRICT OF NEW YORK3                   - - - - -                   X  
4   UNITED STATES OF AMERICA,       :   09 CR 1355   :  
6                   -against-           :  
7                   JOHN BURKE,           :  
8   :  
9                   Defendant.           :  
10   :  
11   X12                   TRANSCRIPT OF TRIAL  
13                   BEFORE THE HONORABLE STERLING JOHNSON  
14                   UNITED STATES SENIOR JUDGE, and a jury.

## 15           APPEARANCES:

16           For the Government:           LORETTA E. LYNCH  
17   United States Attorney  
18   BY: JACQUELYN M. KASULIS  
19   EVAN NORRIS  
20   WHITMAN G. S. KNAPP  
21   Assistant United States Attorneys  
22   271 Cadman Plaza East  
23   Brooklyn, New York24           For the Defendant:           HOWARD L. JACOBS, ESQ.  
25   RICHARD JASPER, ESQ.  
   YING STAFFORD, ESQ.26           Court Reporter:           Gene Rudolph  
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29   (718) 613-253830           Proceedings recorded by mechanical stenography, transcript  
31   produced by computer-aided transcription.

### 3 THE CLERK: Case on trial.

4 THE COURT: Have you given the lawyers copies of the  
5 notes?

6 | THE CLERK: Yes, Your Honor.

7                   THE COURT: The exhibits, you guys will get together  
8 and get these exhibits.

9 MS. STAFFORD: They are ready to go.

10 MR. NORRIS: Yes, Your Honor.

11 THE COURT: With respect to the Family board, the  
12 Gambino Crime Family, is that in evidence?

13 MR. NORRIS: It is not.

14 | That was a demonstrative for summation.

15 MS. STAFFORD: It is not.

16 THE COURT: No summations, defense or prosecution.

17 MS. STAFFORD: You are referring to the PowerPoint,  
18 Your Honor --

19 THE COURT: Yes.

20 MS. STAFFORD: -- the jury asked for?

21 THE COURT: Yes.

22 MS. STAFFORD: Yes.

23 | THE COURT: They asked for Mr. Norris.

24 MR. NORRIS: For mine and for the defense.

25 MS. STAFFORD: Yes.

1           THE COURT: We have to give them a copy of the  
2 indictment. We didn't do that?

3           MR. NORRIS: We do have that ready.

4           THE COURT: The verdict sheet.

5           MR. NORRIS: It's okay from us. I think we made the  
6 final change. I don't know that we had the last copy of it.

7           THE LAW CLERK: We just took the most recent version  
8 you put on ECF. Is that the one.

9           MR. NORRIS: That was the change I made after the  
10 discussion Mr. Jacobs and I had with the Court about Count  
11 Four.

12           THE COURT: Show it to them.

13           I will bring them in and explain that we will give  
14 them what they ask for. But I cannot give them the PowerPoint  
15 and the arguments, either the defense or the government.

16           MR. NORRIS: Very well.

17           THE COURT: Have you checked the indictment?

18           MS. STAFFORD: No, we didn't.

19           (Pause.)

20           MR. JACOBS: The indictment is fine.

21           THE COURT: Are we ready?

22           MR. JACOBS: Yes.

23           THE COURT: Okay. Bring in the jury, please.

24           (Jury present.)

25           THE COURT: Good morning.

1           I see everybody is dry. You didn't get caught in  
2 the rain.

3           Have a seat, ladies and gentlemen.

4           Let the record reflect the Court has received two  
5 notes from the jury. One will be marked Court's Exhibit  
6 number five and the second will be marked Court's Exhibit  
7 number six.

8           (So marked.)

9           Court Exhibit number five reads as follows:

10          Your Honor. Please give us a copy of the  
11 indictment, the verdict sheet and a copy of the prosecution's  
12 closing argument PowerPoint.

13          Thank you.

14          First of all, we will give you a copy of the  
15 indictment and the verdict sheet.

16          With respect to the closing argument, the  
17 PowerPoint, remember I told you that you can only decide the  
18 case based upon the evidence, which is the testimony and the  
19 exhibits. Whatever lawyers say is not evidence. So the  
20 PowerPoint and the summation of the lawyers is not evidence so  
21 I cannot give that to you, for the prosecutor or the defense.

22          Okay. That's why I said you could take notes. Some  
23 of you took notes I think and some didn't. So you have to  
24 rely on your memory.

25          With respect to Court Exhibit number six, it reads

1 as follows:

2                   Exhibits: We would see the following. I guess you  
3 would like to see the following:

4                   Exhibit 532, 606, 516, 519, 525, 529, 532, 701, the  
5 Family board of the Gambino Crime Family, defense summation  
6 PowerPoint, and Exhibit 200 D-1.

7                   MR. NORRIS: I think it's 200 D-1, Your Honor.

8                   THE COURT: Yes. That's what I said. 200 D-1.

9                   Well, the exhibits we will send in to you. With  
10 respect to the Family board of the Gambino Crime Family, I do  
11 not think that is in evidence. Is it?

12                  MR. NORRIS: No, Your Honor.

13                  That was a demonstrative for the summation.

14                  THE COURT: Yes. It is not in evidence, so you  
15 can't see that.

16                  Was there testimony about the Gambino Crime Family.

17                  MR. NORRIS: There was.

18                  And the board was based on -- every single person on  
19 the board was placed there based on testimony from someone as  
20 to the position and the fact that they were within the Gambino  
21 Crime Family.

22                  THE COURT: But there was no document or chart that  
23 laid out the Gambino Crime Family in evidence?

24                  MR. NORRIS: Nothing in evidence, just that board  
25 reflecting the testimony of the witnesses.

1                   THE COURT: Okay. As I said, with respect to the  
2 defense summation and the PowerPoint, that I cannot give you  
3 because it is only the testimony and the exhibits.

4                   Okay.

5                   MR. NORRIS: I will just add, certainly to the  
6 extent there is any question as to the rank of any particular  
7 individual in the case, we can certainly provide the testimony  
8 from the witness showing what their rank was and, therefore,  
9 how they got on that board.

10                  THE COURT: If that is so, then you have to be very  
11 specific in what you want to ask for.

12                  Okay. Thank you very much.

13                  (The following occurred in the absence of the jury.)

14                  THE COURT: Let the record reflect Mr. Jasper is  
15 here.

16                  MR. JASPER: Good morning, Judge.

17                  THE COURT: They will show you the note that the  
18 jurors asked for.

19                  MR. NORRIS: Thank you, Your Honor.

20                  THE COURT: Okay. All exhibits that are in evidence  
21 will be sent in to the jury, is that correct?

22                  MR. NORRIS: Yes, Your Honor.

23                  MS. STAFFORD: Yes, Your Honor.

24                  (Recess taken.)

25                  (Continued on next page.)

1 (The following occurred in the absence of the jury  
2 at 3:00 o'clock pm.)

3 THE COURT: I am going to put on the record the  
4 note.

5 MS. KASULIS: Okay.

6 MR. JASPER: Judge, is Mr. Burke coming up, Your  
7 Honor?

10 MR. JASPER: Yes.

11 THE COURT: Let the record reflect the Court has  
12 received another note and it reads. Court Exhibit number 7:

13                   Please provide us with the transcript of  
14 Mr. R. Leff's testimony.

15 You are going to do that, go through it, and make  
16 sure that there are no objections, no sidebars or anything.

17 MS. KASULIS: I think we have actually done that,  
18 Your Honor.

19                   This testimony was relatively short. It is right  
20 here. We have removed all the objections and any sidebar,  
21 anything along those lines. It is short. It is probably 15  
22 pages.

23 THE COURT: Okay.

24 MS. KASULIS: Would Your Honor rather have us read  
25 it to the jury or --

1                   THE COURT: No. I send it back.

2                   MS. KASULIS: We have the one copy. Do you want to  
3 have more than one copy sent to the jury?

4                   THE COURT: Send one copy.

5                   MS. KASULIS: Okay.

6                   THE CLERK: We will label this 7-a.

7                   THE COURT: Yes, 7-a.

8                   (So marked.)

9                   THE CLERK: Do you still want the defendant up?

10                  MS. STAFFORD: Yes.

11                  THE COURT: Do you want to bring him up?

12                  MR. JASPER: We can bring him up and show him the  
13 note. You can send it back. We will just let him know at  
14 least what is happening.

15                  THE COURT: Yes. Get the marshals. They are  
16 bringing him up?

17                  THE CLERK: Yes.

18                  THE COURT: Show it to him and send him back down.

19                  THE CLERK: Do you want to send this back in the  
20 meantime?

21                  THE COURT: No. We don't have to wait for the  
22 defendant. It's ready to give to the jury?

23                  MR. JASPER: Yes.

24                  THE COURT: The other thing, they are going to leave  
25 around 5:00 o'clock, I guess.

1 MS. KASULIS: Are they?

2 THE COURT: You've got that one.

3 MS. KASULIS: She is actually an alternate, Your  
4 Honor.

5 THE COURT: The one at 5:00 o'clock?

6 MS. KASULIS: She was an alternate. She was  
7 alternate number one by the end of the trial. She is an  
8 alternate. She had been unable to stay.

9 THE COURT: I will tell them they can stay as long  
10 as they want to. While I am here, I will bring them in and  
11 tell them they can sit as long as they want to or go when they  
12 want to.

13 Wait for the defendant and then we will get the  
14 jury.

15 THE CLERK: Yes, Your Honor.

16 (Defendant present.)

17 THE COURT: Seat the jury, please.

18 (Jury present.)

19 THE COURT: Have a seat, ladies and gentlemen.

20 I just wanted to bring you out to let you know that  
21 I have received your note requesting the testimony of  
22 Mr. Leff. The lawyers have gotten together and they have got  
23 that testimony. They will send it in to you. It is very  
24 short, about 15 pages.

25 I also wanted to let you know that you can

1 deliberate as long as you want to. When you decide that you  
2 want to finish, you will come back another day, whatever it  
3 is, you just let me know. Okay?

4 We will send that testimony back. It will be marked  
5 Court's exhibit number 7-a. The note is 7, requesting the  
6 testimony.

7 Okay.

8 A JUROR: We have the testimony already.

9 THE COURT: It was sent in?

10 THE CLERK: Yes, Your Honor.

11 THE COURT: Faster than me.

12 Okay. I just wanted to let you know you can  
13 deliberate as long as you want. Just let me know.

14 (The following occurred in the absence of the jury.)

15 THE COURT: All right.

16 (Recess taken.)

17 (Continued on next page.)

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3 THE COURT: Bring the defendant out, please.

4 (Defendant present.)

5 | Seat the jury, please.

6 (Jury present.)

7 THE COURT: Be seated, ladies and gentlemen.

8 Let the record reflect that the Court has received  
9 another note from the jury marked Court's Exhibit number 8.

10 | It reads as follows:

11 Your Honor, we have finished deliberating for the  
12 day. We will return at our normal time tomorrow morning.

13 (So marked.)

14 All well and good. See you tomorrow morning. Don't  
15 discuss the case. Keep an open mind and go to work tomorrow  
16 morning.

17 Have a good evening.

18 (The following occurred in the absence of the jury.)

19 MR. NORRIS: Have a good night.

20 THE COURT: You too.

21 (Recess taken until 9:30, June 5, 2012.)

## 1                   I N D E X

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## 3   C O U R T       E X H I B I T S:

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5   Court's Exhibit number 5                           2423

6   Court's Exhibit number 6                           2423

7   Court Exhibit number 7                           2426

8   Court Exhibit number 7-a                        2427

9   Court's Exhibit number 8                        2430

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